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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09 325,963	06 04 1999	BONNIE WEISKOPF ALBRECHT	5466-USA4A	3500

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EXAMINER

CHANG, VICTOR S

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 03 18 2003

17

Please find below and/or attached an Office communication concerning this application or proceeding.

AS. 17

Office Action Summary

Application No.

09/325.963

Applicant(s)

ALBRECHT ET AL.

Examiner

Victor S Chang

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133)
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 23 December 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16, 18-24, 29-33 and 35 is/are pending in the application.
- 4a) Of the above claim(s) 1-12 and 18-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-16, 29-33 and 35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Rejections not maintained are withdrawn.

Response to Amendment

3. Claims 13-15, 31 and 35 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Lindquist et al. (US 3665918), substantially for the reasons set forth in section 3 of Paper No. 14, together with the following additional observations.

With respect to Applicant's Response arguing that the Examiner is incorrect in classifying Lindquist's polyurethane foams as thermoplastic, because Lindquist teaches "its foams are made with a crosslinker" (Response, page 3, second complete paragraph), the Examiner notes that the example cited by Applicant shows one particular embodiment in which a conventional "crosslinker" is clearly absent. Further, Lindquist also teaches that a typical polyester polyurethane foam may be prepared as set forth in Example II of US Pat. No. 2956310 (column 4, lines 30-32). The Examiner would like to point out that the cited Example II of US '310 is clearly free of "crosslinker" in the formulation, and the prepolymer is a thermoplastic which does not appear to contain tri-functional polyol and can be post processed to form a thermoplastic polyurethane foam (US '310, column 6). Finally, it is believed that the fact that

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Lindquist's foam can be compression molded further suggests that its thermoplastic property is inherent, Applicant's argument notwithstanding.

Regarding the newly amended claim 13, which now recites "foam cells are ruptured or enlarged by stretching" (Response, page 3, third complete paragraph), the Examiner takes Official Notice that rupturing or enlarging foam cells to increase its permeability is old and well known. Note also as evidence of the state of the art Watson (US 3862282) which discloses a method to rupture the cellular membranes of polyurethane foams under stretching condition (Abstract). As such, it would have been obvious to one of ordinary skill in the art to rupture the cellular membranes in Lindquist's foam, motivated by the desire to increase its permeability.

4. Claims 13-16 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walther (US 5905097), substantially for the reasons set forth in section 4 of Paper No. 14, together with the following additional observations.

Regarding the newly amended claim 13, which now recites "foam cells are ruptured or enlarged by stretching" (Response, page 3, third complete paragraph), the Examiner reiterates that rupturing or enlarging foam cells to increase its permeability is old and well known, as set forth above.

5. Claims 29, 30, 32 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lindquist (US 3665918) in view of Pufahl (US 4169184), substantially for the reasons set forth in section 5 of Paper No. 14, together with the following additional observations.

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Based on the foregoing reasons, the prior art rejection of record is still deemed to be valid.

As to claim 32, upon reconsideration, the Examiner now believes that pressure sensitive tape or sheet comprising a multilayer backing which contains a foamed layer is also old and well known. Additionally, the Examiner also now believes that applying an outer protective release layer on a pressure sensitive layer is conventional and common knowledge.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor S Chang whose telephone number is 703-605-4296. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel H Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

VSC
March 13, 2003

DANIEL ZIRKER
PRIMARY EXAMINER
GROUP 1800

1700

Daniel Zinker